

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 160 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

HASMUKBHAI L PANDYA

Versus

MADHUKANTBEN (DELETED)

Appearance:

MR PV NANAVATI for Petitioners
MR SB VAKIL for Respondent No. 1, 2, 3, 4, 5, 6,
7, 8, 9

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. This is tenant's Revision under Section 29 of the Bombay Rent Act against non-concurrent judgment and Decree of the Appellate Court dated 25.7.1986.

2. The Suit for eviction of the revisionist was filed by the respondents on the ground that the tenants defendants did not pay arrears of rent exceeding six months despite service of notice of demand and also failed to pay municipal taxes and education cess which was also demanded in the notice. Eviction was sought on other grounds also, namely, the tenant has erected permanent structure in the suit premises without written consent of the plaintiff - landlord. It was also alleged that the defendant has committed waste of the suit premises. Another allegation was that the defendant committed breach of the terms of the contract of tenancy. Eviction was also sought on the ground that the plaintiff required the suit premises reasonably and bonafide for his personal occupation.

3. The suit was contested by the tenant taking various pleas and denying all the allegations made in the plaint by the plaintiff. It was also pleaded that the notice in question is invalid and the suit is barred by resjudicata and is further barred by the provisions of Section 25 of the Bombay Rent Act.

4. The trial Court negatived all the allegations of the plaintiffs landlords and accepted the defence plea, hence the Suit was dismissed by the trial Court in toto.

5. The landlord preferred an Appeal. The Appellate Court agreed that the findings of the trial Court on all issues except on one, namely, whether the tenant has or has not committed breach of the terms of the tenancy. In the opinion of the Appellate Court the tenant committed breach of the terms of tenancy inasmuch as it was specifically mentioned in the rent note that the tenant shall pay municipal taxes as well as education cess and contravening these terms in the rent note he did not pay the same either to the plaintiff or to the municipal Corporation. Consequently the decree for eviction was passed by the Appellate Court.

6. I have heard learned Counsel for the parties and examined the Judgment of the lower Appellate Court.

7. The only point for consideration in this revision is whether the tenant committed breach of the terms of tenancy or not.

8. The Appellate Court fully agreed with the findings of the trial Court that the tenant was ready and willing to pay the rent and that the usual mod of payment

of rent was through cheque and upon receipt of notice of demand arrears of rent were tendered through cheque which was refused by the plaintiff - landlord. Both the courts below on this evidence found that the tenant was ready and willing to pay the arrears of rent hence no cause of action accrued for filing the Suit for eviction either under Section 12(3)(a) or under Section 12(3)(b) of the Rent Act.

9. The Appellate Court has, however, further proceeded to examine whether by violation of terms in the rent note regarding payment of taxes to the municipality and education cess the tenant has committed breach of the terms of tenancy and was liable to be evicted on this ground.

10. On this point the Appellate Court found that the defendant practically did not pay any amount of tax in the Municipal Corporation. The Municipal Corporation served notice on the tenant - revisionist for disconnecting essential supply including water connection and thereafter the tenant filed Civil Suit No.3681 of 1973 in City Civil Court for permanent injunction restraining the municipal Corporation from disconnecting the water connection and other sanitary connections. The trial Court found that the defendants were in arrears of Rs.14,690.27 ps. towards municipal taxes in the year 1972-73, in the year 1973-74 they were in arrears of taxes amounting to Rs.10,247.30 ps., in the year 1974-75 they were in arrears of Rs.11,260.66 ps. and in the year 1975-76 they were in arrears of municipal taxes, etc. amounting to Rs.15,525.66 ps. It was also found by the Appellate Court that the defendant did not pay any amount towards education cess. According to the Appellate Court on 2.1.1986 the defendants were in arrears of tax amounting to Rs.22,005.15 ps. This figure was found after examining the extract of copy of demand Register Ex.12 which was not denied by the revisionist. In the course of argument before the Appellate Court learned Counsel for the tenant requested for 15 days time to pay the taxes and for advising the tenants to clear all the arrears of taxes during this interval. However, the Appellate Court found that even on the date of writing the Judgment by the Appellate Court the defendants were in arrears of taxes exceeding Rs.14,000/- which was not paid despite time granted to them. Under these circumstances the Appellate Court concluded that the tenants did not pay the municipal tax and education cess which was an obligation on them under the Rent Note which represented one of the terms of the contract of tenancy and in this way the defendants committed breach of the

terms of tenancy under Section 12(1) of the Bombay Rent Act. The Appellate Court rightly repelled the contention on behalf of the tenant that on this ground the Decree for eviction could not be passed rather the plaintiffs should have filed separate suit for recovery of tax and education cess. I do not find any illegality in the non-concurrent findings recorded by the lower Appellate Court regarding tenant committing breach of the terms of contract of tenancy. This was, therefore, a valid ground for passing the Decree for eviction against the tenant. The Appellate Court was, therefore, justified in reversing the Judgment and Decree of the trial Court and granting the Decree for possession in favour of the plaintiffs landlords. The Revision has therefore no merit and must fail.

11. The revision is hereby dismissed with no order as to costs.

sd/-

Date : July 07, 2000 (D. C. Srivastava, J.)

sas